

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION

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April 1, 2019

The Hon. Ellen Weintraub
Chair
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

The Hon. Caroline Hunter
Commissioner
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

The Hon. Matthew Petersen
Vice Chair
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

The Hon. Steven Walther
Commissioner
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Dear Commissioners:

As Chairperson of the Committee charged with Federal Election Commission oversight, I write to request your attention to the matters discussed herein.

The Commission has a central role in administering federal campaign finance law, including public disclosure of funds raised and spent to influence federal elections and enforcement of source and contribution limits. Federal campaign finance jurisprudence, fundraising tactics, and technology have evolved significantly since the last time the Commission testified before Congress in November 2011. The Commission itself has changed over the years, with several Commissioners joining and departing the Commission since the Committee's last FEC oversight hearing.

The Committee looks forward to hearing from the Commission regarding its opportunities and challenges, and to be apprised of the Commission's plans as it prepares for the 2020 federal election cycle.

Enclosed are questions to the Commission. I respectfully request your responses by May 1, 2019.

Sincerely,


Zoe Lofgren
Chairperson

QUESTIONS

1. Why has the position of General Counsel been vacant or filled in an acting capacity since July 2013?
2. What challenges has the Commission faced in hiring a General Counsel?
3. What is the status of hiring a permanent General Counsel, and when do you expect to decide on a hire?
4. Why has the position of Inspector General been vacant since March 2017?
5. How has the lack of an Inspector General affected the Commission, including the simultaneous vacancy of a Deputy Inspector General?
6. What is the status of hiring a permanent Inspector General, and when do you expect to decide on a hire?
7. What is the status of hiring a permanent Deputy Inspector General?
8. What other positions are filled by individuals in an acting capacity?
9. What committees exist at the Commission, and what is each committee's purpose?
10. For each committee listed in Question 9, how many times has it met each year since 2012? Please provide a copy of any agendas and minutes from these committee meetings.
11. How have the two Commissioner vacancies affected the Commission?
12. According to the Inspector General Statement on the Federal Election Commission's Management and Performance Challenges (2018), the Inspector General contracted with a consultant company to conduct a study to determine the root causes of low employee morale at the agency. The Inspector General wrote that it "believe[s] that an action plan from top level management to address all the root causes of low employee morale is still critical." Has the Commission established an "action plan?" If so, please describe it. If the Commission has not created an action plan, why not?
13. How is the Commission addressing the root causes of low employee morale?
14. According to the Inspector General Statement on the Federal Election Commission's Management and Performance Challenges (2018), "the senior leadership roles of the Staff Director and Chief Information Officer (CIO) are filled by the same individual. As both senior leader positions are critical to the agency, we strongly believe these two positions should have separate full-time personnel solely dedicated to each position." Do you agree with the Inspector General?
15. According to the Office of Inspector General's most recent Semiannual Report to Congress (November 2018), a total of 7 Office of Inspector General Audits and

Inspections had 50 recommendations that still required Commission follow-up as of August 2018. This includes 23 recommendations that have been 7 years outstanding (2010 Follow-up Audit of Privacy and Data Protection); 1 recommendation that is 6 years outstanding (2010 Follow-up Audit of Procurement and Contract Management); 7 recommendations that are 5 years outstanding (Inspection of the FEC’s Disaster Recovery Plan and Continuity of Operations Plans); 3 recommendations that are 4 years outstanding (Audit of the FEC’s Office of Human Resources); 4 other recommendations that are 4 years outstanding (Inspection of FEC’s Compliance with FMFIA/OMB A-123); 9 recommendations that are 2 years outstanding (Audit of the FEC Telework Programs); and 3 recommendations that are 9 months outstanding (Required Review Under the DATA Act). Why are these recommendations still outstanding? Please provide the Committee with a status update on each of these recommendations.

16. Please provide a summary of any improvements that the Commission has made to its IT systems since Chinese hackers crashed them during the 2013 government shutdown. What is the Commission doing to address and anticipate future problems?
17. In the Chair’s opening remarks at the February 7, 2019 open meeting, the Chair noted that the Commission has “hundreds of cases on our enforcement docket, 326 to be precise, over 50 already imperiled by a looming statute of limitations.”
 - a. How many cases are on the enforcement docket as of the date of this letter?
 - b. How many cases are imperiled by a looming statute of limitations?
 - c. How does the Commission plan to address the hundreds of cases?
 - d. How often does the Commission plan to meet for the remainder of 2019 in Executive Session to dispose of these cases?
18. How many Matters Under Review are considered in a typical Executive Session?
19. According to the “Status of Enforcement – Fiscal Year 2018” memorandum from the Office of General Counsel, there was a caseload of 317 cases, including 113 “inactive” cases and 204 “active” cases. What distinguishes an “inactive” case from an “active” case?
20. According to the “Status of Enforcement – Fiscal Year 2018” memorandum from the Office of General Counsel to the Commission, of First General Counsel’s Reports Pending with the Commission, numerous cases – including one dating back to 2012 – have been pending for years and have been “held over” on multiple dates. See, for example, the following excerpt from the memorandum:

Receipt	Assigned	Circ.	# of Days Receipt to Circ.	# Days Assigned to Circ.	# of Days Receipt to Close of Quarter	# of Days Circ. to Close of Quarter	Held Over Dates
06/20/12	10/09/12	03/10/14	628	517	2293	1665	02/10/15; 03/09/15; 03/17/15; 04/21/15; 08/11/15; 09/15/15; 11/17/15; 12/10/15; 08/15/17; 09/12/17;
02/11/14	07/02/14	10/28/14	259	118	1692	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
02/21/14	07/02/14	10/28/14	249	118	1682	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
03/27/14	07/02/14	10/28/14	215	118	1648	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
05/21/14	10/07/14	02/04/15	259	120	1593	1334	06/28/16; 01/24/17
03/31/15	06/29/15	05/12/17	773	683	1279	506	11/7/17; 11/8/17; 11/14/17; 11/16/17; 9/25/18; 10/9/18; 10/11/18
12/04/14	06/04/15	11/13/15	344	162	1396	1052	11/15/16; 12/06/16; 12/08/16; 01/24/17; 01/25/17; 05/22/18; 07/07/18
05/06/16	09/01/16	01/09/17	248	130	877	629	06/06/17; 12/12/17
03/31/15	04/01/16	02/08/17	680	313	1279	599	9/25/17; 10/11/18; 9/25/18; 10/9/18; 10/11/18
02/23/15	06/24/15	03/06/17	742	621	1315	573	10/11/17; 10/12/17; 10/24/17; 11/7/17; 11/8/17; 11/14/17; 11/16/17; 12/12/17; 10/9/18; 10/11/18

Why are some enforcement cases held over – sometimes for years – without resolution?

21. From January 1, 2012 to the present, how many enforcement actions were initiated as a result of:
 - a. Complaint-generated matters?
 - b. Internally-generated matters?
 - c. External referrals?
 - d. *Sua sponte* submissions?
22. How many enforcement cases, organized by election cycle, are still unresolved and not yet closed?
23. How many Administrative Fines cases has the Commission closed since January 1, 2012?
24. Does the Commission plan to expand the Administrative Fines Program to cover other reporting violations, as authorized by Public Law 113-72?

25. How many Matters Under Review has the Commission closed since January 1, 2012?
26. How many and what percentage of the Matters Under Review in Question 25 were resolved exclusively on a tally vote?
27. For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs included at least one deadlocked vote of the Commission during Executive Session? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR number for each MUR that included at least one deadlocked vote.
28. For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs deadlocked on all votes taken during Executive Session, other than a vote to close the file and send the appropriate letter(s)? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR numbers and MUR subject of the cases that deadlocked on all votes taken in Executive Session (other than a vote to close the file and send the appropriate letter(s)).
29. Once the Commission deadlocks on a recommendation from the Office of General Counsel, is it the Commission’s position that the Office of General Counsel should not make the same recommendation in an analogous case?
30. Since the Supreme Court’s decision in *Citizens United*, how many times has the Commission found a violation of the coordination regulations? Please provide the Matter Under Review numbers.
31. Since January 1, 2012, how many enforcement cases has the FEC pursued through litigation after attempting conciliation?
32. What is the current relationship between the FEC and the Department of Justice regarding enforcement matters? Do FEC enforcement staff have the ability to consult with Department of Justice staff where appropriate?
33. How many rulemakings has the Commission completed since January 1, 2012, excluding Civil Monetary Penalties Inflation Adjustments? Please provide a brief summary of each new rule.
34. Please provide a brief summary, including the current status of Commission action, for each Advance Notice of Proposed Rulemaking (ANPRM) that the Commission has opened or reopened since January 1, 2012. In the summary, please provide the status of the Commission’s deliberations on these matters, including but not limited to whether and when it expects to take further action on each ANPRM.

35. Please provide a brief summary, including the current status of Commission action, for each Notice of Proposed Rulemaking (NPRM) that the Commission has opened or reopened since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each NPRM.
36. Please provide a brief summary, including the current status of Commission action, of any petition for rulemaking for which the Commission approved a Notice of Availability since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each petition.
37. What further action does the Commission anticipate taking on REG 2011-02 concerning internet communication disclaimers? When does it anticipate taking this further action, if any?
38. How many litigation cases has the Commission appealed in the past 10 years after an adverse court ruling?
39. For the past decade, how many requests for advisory opinions lacked four affirmative votes to provide an answer? Please provide the numbers and advisory opinion citations by year.
40. Do you view advisory opinions as binding on analogously-situated parties?
41. In the Minutes of an Open Meeting from Sept. 15, 2016, then-Chair Petersen stated that, without objection, the General Counsel's Office was "directed to prioritize cases involving allegations of foreign influence." What is the status of this direction to the Office of General Counsel? How many cases have been prioritized and what is their disposition?
42. Besides efforts to encourage voluntary compliance with the law and deadlocks on enforcements matters, what action has the Commission taken to address the threat of foreign interference in American elections?
43. What have been the effects of Directive 70 on the audit process?
44. Have any Commissioners put forward proposals to change any aspect of Directive 70 on processing audits?
45. What is the average time that it takes to complete an audit under Directive 70?
46. What are the greatest challenges to the Commission's ability to fulfill its mission and mandate? Each Commissioner is invited to answer this question separately.